REMARKS

The Applicants have made amendments to claims 13, 14 and 15 to overcome the 35 USC 112 objections. In particular the term "auxiliary" has been used consistently throughout claims 13, 14 and 15 and replaces "secondary" previously recited. Clearly, the term auxiliary and secondary are interchangeable and the scope of the claims has not been narrowed by such an amendment which is purely for consistency and antecedent basis with claim 10 upon which claims 13, 14 and 15 depend either directly or indirectly.

The Examiner's objection to claim 10 is not understood. The Examiner suggests use of a term "holding frame" but such term is not used in the claim as presently drafted. The claim uses the term "primary eyeglass frame" and that the temporal members are connected at spaced locations to that primary frame. Accordingly, claim 10 does appear to satisfy the requirements that 35 USC 112 but in the event that the Examiner has objections, he has respectfully requested to clarify those further.

Claim 22 has been amended to delete "means" and therefore refer to primary frame in a consistent manner. This was clearly the intent of the previous claim and accordingly, the scope of the claim is not narrowed.

The Examiner has rejected claims 1, 4, 7 and 8 under 35 USC 102(e). Claim 1, 4 and 8 have been amended to incorporate the subject matter of claims 2, 5 and 9 respectfully and thereby the rejection under 102(e) appears to be moot. However, the Applicant's wish to reserve the right to prosecute claims of the scope of claims 1, 4 and 8 in a continuing application at such time as a determination as to the respective entitlement between the Applicant and the cited reference has been determined.

Claim 1 as amended incorporates the subject matter of claim 2 with additional amendments to remove limitations previously recited in claim 1. Accordingly, claim 1 as amended is broader in scope then previous claim 2 and as such, the amendments made are not narrowing amendments for the purpose of overcoming a statutory requirement for patentability.

The Examiner has rejected claim 2 and the claims dependent thereon on the basis of a combination of Zelman and Masumaga. The Examiner suggests that Zelman teaches the claimed invention except for the provision of the flexibility of the bridge. It is the Examiner's position

that flexibility of the bridge is disclosed in Masumaga and therefore the combination of Zelman and Masumaga would render the invention claimed as obvious.

The Applicant's believe that such a combination is not appropriate and is based upon *ex post facto* analysis resulting from the disclosure of the Applicant's invention. Zelman teaches a rigid frame with magnetic attachment of the auxiliary frame but does not in any way disclose the provision of a flexible bridge. Indeed, Zelman teaches away from the provision of such a bridge by utilizing the bridge of both the primary and auxiliary frames as attachment points to stabilize the auxiliary lens on the primary lens. The clear teaching therefore is that the bridge shown in Zelman must be rigid and provide support for the auxiliary lens. This is quite contrary to the provision recited in claim 1 of the present application for providing flexibility at the bridge.

Masumaga teaches a flexible bridge but is entirely silent as to the provision of any auxiliary lens. The depiction of the flexibility of the bridge in Masumaga would in fact discourage any consideration of the provision of an auxiliary lens with such a device. It is morover entirely silent as to how such a lens could be accommodated within such a device.

Each of the references sited by the Examiner therefore teach away from and discourage the provision of the claimed invention and moreover do not teach or direct the reader toward the provision of the flexible bridge in the primary and auxiliary frame combination.

The Applicant's have recognized that the provision of the spaced temporal supports recited in claim 1 permits the auxiliary lens to be secured to the frame while still accommodating flexibility within the bridge. The provision of the spaced temporal supports at a maximum distance from the zone of flexibility provided by the bridge enables the bridge to accommodate the deflections normally experienced in use without adverse affecting the retention of the auxiliary frame. The maximized spacing results in a minimal disturbance to the magnetic engagement and thereby ensures effective retention of the auxiliary lens even when deflection of the bridge is experienced in normal use.

These attributes are not present in the teachings of either Zelman or Masumaga and there is no direction or teaching of this attribute to be found either alone or in combination. Accordingly, it is believed that claim 1 clearly and patentably distinguishes over the cited references. The claim dependent upon claim 1, namely claim 3, is similarly distinguished.

Independent claims 4, 8 and 10 similarly claim structure in which the support for the auxiliary frames is spaced from the flexible portions of the frames to thereby minimize the disturbance of the connections when accommodating flexure. As noted above, such an advantage is not disclosed or suggested by the art relied on by the Examiner and accordingly these independent claims are believed to clearly and patentably distinguish over that art. The claims dependent on the independent claims similarly distinguish over the art.

Claim 22 is directed to the auxiliary eyeglass devise per se and neither of the references show or suggest an auxiliary eyeglass frame incorporating a portion remote from the attachment points that is made of flexible material. Accordingly, it is believed that claim 22 clearly and patentably distinguishes over the art and is also in condition for allowance together with the claims dependent thereon.

Accordingly, further consideration of the present application is respectfully requested.

Respectfully submitted,

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Version With Markings to Show Changes Made

WHAT IS CLAIMED IS:

1. (amended) An eyeglass device comprising:
two temporal members,
a primary eyeglass frame having means for holding a first set of lenses therein, said primary eyeglass frame including a first bridge, two first side portions, each having a first temporal extension for connecting to a temporal member for retaining the primary frame on a user, each said first temporal extension including a first magnet attached ~~to a bottom thereof~~thereto,
an auxiliary eyeglass frame having means for holding a second set of lenses therein, said auxiliary eyeglass frame including a second bridge, two second side portions, each having a second temporal extension, each said second temporal extension including a second magnet attached ~~to a top thereof~~thereto,
wherein the first magnets attached to respective ~~bottoms~~ones of the first temporal extensions magnetically engage respective second magnets attached to respective ~~tops~~ones of said second temporal extension in overlying relation so as to secure said auxiliary eyeglass frame to said primary eyeglass frame~~.~~ and wherein at least one of said first bridge and said second bridge is comprised of a flexible shape memory alloy.

~~2.~~(cancelled) ~~An eyeglass device according to claim 1 wherein at least one of said first bridge and said second bridge is comprised of a flexible shape memory alloy.~~

3. (amended) An eyeglass device according to claim 1~~2~~ wherein said flexible shape memory alloy is one of NiTi and CuAlBe.

4. (amended) An eyeglass device comprising:
a primary eyeglass frame having means for holding a first set of lenses therein and including two first side portions each having a first temporal extension for connecting to a temporal member, each said first side portion carrying a first magnet,

an auxiliary eyeglass frame having means for holding a second set of lenses therein and two second side portions, each having a second temporal extension carrying a second magnet,

wherein the first magnets carried by respective first side portions magnetically engage respective second magnets carried by respective second temporal extensions with the second temporal extensions extending underneath respective first temporal extensions, securing said auxiliary eyeglass frame to said primary eyeglass frame with the second set of lenses aligned with the first set of lenses. and wherein said primary eyeglass frame includes a first bridge comprised of a flexible shape memory alloy, and said auxiliary eyeglass frame includes a second bridge comprised of a flexible shape memory alloy.

~~5.~~ (cancelled) ~~An eyeglass device according to claim 4 wherein said primary eyeglass frame includes a first bridge comprised of a flexible shape memory alloy, and said auxiliary eyeglass frame includes a second bridge comprised of a flexible shape memory alloy.~~

6. (amended) An eyeglass device according to claim ~~4~~5 wherein said flexible shape memory alloy of said first bridge is one of NiTi and CuAlBe, and said flexible shape memory alloy of said second bridge is one of NiTi and CuAlBe.

7. An eyeglass device according to claim 4 wherein respective second magnets are underneath respective first magnets.

8. (amended) An auxiliary eyeglass device adapted to be stably supported by a primary eyeglass device which includes frame means for holding a primary set of lenses therein and two primary side portions each carrying a primary magnet, the auxiliary eyeglass device comprising:

means for holding an auxiliary set of lenses therein and two auxiliary side portions, each having a rearward temporal extension carrying an auxiliary magnet, wherein respective auxiliary magnets can be aligned with ~~underneath~~ respective primary magnets in magnetic engagement therewith to inhibit relative movement between

said auxiliary eyeglass device and said primary eyeglass device frame means. wherein said auxiliary eyeglass device includes a frame with first bridge comprised of a flexible shape memory alloy.

9. (cancelled)~~An eyeglass device according to claim 8 wherein said auxiliary eyeglass device includes a frame with first bridge comprised of a flexible shape memory alloy.~~

10. An eyeglass device comprising:
a primary eyeglass frame having means for holding a primary set of lenses, and temporal members connected at spaced locations to said primary frame, and operable to retain said primary frame on a user;
an auxiliary eyeglass frame having means for holding an auxiliary set of lenses therein and adapted to be positioned in front of said primary lenses, at least one portion of the auxiliary eyeglass frame and at least one portion of the primary eyeglass frame having releasable engagement means interengageable to inhibit relative movement between the frames, at least one other portion of one of the auxiliary eyeglass frame and primary eyeglass frame being comprised of a flexible material.

11. An eyeglass device according to claim 10 wherein said flexible material is a shape memory alloy.

12. An eyeglass device according to claim 11 wherein said wherein said flexible shape memory alloy is one of NiTi and CuAlBe.

13. (amended)An eyeglass device according to claim 10 wherein said releasable engagement means comprises magnetic means for magnetic interengagement of said at least one portion of the primary frame with said at least one portion of the auxiliary~~secondary~~ frame.

14. (amended) An eyeglass device according to claim 13 wherein the magnetic means on said auxiliary~~secondary~~ frame engages under magnetic means on the primary frame.

15. (amended)An eyeglass device according to claim 11 wherein said releasable engagement means comprises magnetic means for magnetic interengagement of said at least one portion of the primary frame with said at least one portion of the auxiliary~~secondary~~ frame.

16. An eyeglass device according to claim 10 wherein said at least one portion of said primary eyeglass frame and said at least one portion of said auxiliary eyeglass frame are in respective temporal regions and said at least one other portion of said auxiliary eyeglass frame and said primary eyeglass frame is a bridge.

17. An eyeglass device according to claim 16 wherein said at least one portion of said primary eyeglass frame and said at least one portion of said auxiliary eyeglass frame is a temporal extension.

18. An eyeglass device according to claim 13 wherein said at least one portion of said auxiliary eyeglass frame is a temporal extension and said at least one other portion of said auxiliary eyeglass frame is a bridge.

19. An eyeglass device according to claim 10 wherein said at least one portion of said primary eyeglass frame and said at least one portion of said auxiliary eyeglass frame are in respective temporal regions and said at least one other portion of said auxiliary eyeglass frame and said primary eyeglass frame are in respective temporal regions and form a portion of a temple member.

20. An eyeglass device according to claim 10 wherein said at least one portion of said primary eyeglass frame and said at least one portion of said auxiliary eyeglass frame are bridges of respective frames and said at least one other portion of said